

CHAPTER 45
POST-CONFLICT GOVERNANCE: THE LAW OF
OCCUPATION

TABLE OF CONTENTS

I. LEGAL FRAMEWORK OF THE LAW OF OCCUPATION.....	1
II. OCCUPATION DEFINED	2
III. AUTHORITY OF OCCUPANT.....	4
IV. ADMINISTRATION OF OCCUPIED TERRITORY	7
V. RIGHTS OF THE OCCUPIED POPULATION.....	10
VI. PROPERTY.....	13
VII. SERVICES OF OCCUPIED POPULATION.....	17
VIII. PUBLIC FINANCE.....	18
IX. SECURITY OF THE OCCUPANT	19

MAJ SEAN WATTS
SEPTEMBER 2004

THIS PAGE INTENTIONALLY LEFT BLANK

CHAPTER 45

POST-CONFLICT GOVERNANCE: THE LAW OF OCCUPATION

I. LEGAL RESOURCES OF THE LAW OF OCCUPATION

- A. Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annex (1907) [HR]
- B. Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949) [GC IV]
- C. UN CHARTER
- D. Protocol Additional to the Geneva Conventions of 1949, as Relating to Victims of International Armed Conflicts (Protocol I, 1977) [GP I]
- E. Dep't of the Army Field Manual 27-10, The Law of Land Warfare (1956) [FM 27-10]
- F. EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION (1993)
- G. INTERNATIONAL LAW AND THE ADMINISTRATION OF OCCUPIED TERRITORIES: TWO DECADES OF ISRAELI OCCUPATION OF THE WEST BANK AND GAZA STRIP, (Emma Playfair, ed., (1992).
- H. RAJA SHEHADEH, OCCUPIER'S LAW: ISRAEL AND THE WEST BANK (1985).

II. OCCUPATION DEFINED

- A. General. Belligerent occupation is the military occupation of enemy territory: “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” [HR, art. 42; FM 27-10, ¶ 351]
 - 1. Commencement of Occupation a **Question of Fact**. A state of occupation exists when two conditions are satisfied: first, the invader has rendered the invaded government incapable of publicly exercising its authority; and second, the invader has successfully substituted its own authority for that of the legitimate government [FM 27-10, ¶ 355]
 - 2. Occupation = Invasion + Firm Control. The radius of occupation is determined by the effectiveness of control; occupation must be actual and effective [FM 27-10, ¶ 356]
- B. Law. The law of belligerent occupation refers to those provisions of customary or conventional international law that regulate the conduct of a belligerent in occupied territory.
- C. **Proclamation Not Required**. No proclamation of occupation is legally necessary, but fact of military occupation should be made known [FM 27-10, ¶ 357]. In post-WWII Germany, General Eisenhower issued Proclamation Number 1. In Operation IRAQI FREEDOM, L. Paul Bremer, civilian administrator of the Coalition Provisional Authority (CPA) issued Coalition Provisional Authority Regulation Number 1 on 16 May 2003.¹

¹ Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA), relevant U.N. Security Council resolutions, including Resolution 1483 (2003), and the laws and usages of war, I hereby promulgate the following:

Section 1, The Coalition Provisional Authority

- 1) The CPA shall exercise powers of government temporarily in order to provide for the effective administration of Iraq during the period of transitional administration, to restore conditions of security and stability, to create conditions in which the Iraqi people can freely determine their own political future, including by advancing efforts to restore and establish national and local institutions for representative governance and facilitating economic recovery and sustainable reconstruction and development.
- 2) The CPA is vested with all executive, legislative and judicial authority necessary to achieve its objectives, to be exercised under relevant U.N. Security Council resolutions, including Resolution 1483 (2003), and the laws and usages of war. This authority shall be exercised by the CPA Administrator.

D. No Transfer of Sovereignty.

1. Military occupation does not transfer sovereignty to the occupant, and the occupant's powers are provisional only; the occupant may take only those measures necessary for the maintenance of law and order and proper administration of the occupied territory [FM 27-10, ¶ 358]
2. Annexation or the establishment of puppet governments prohibited [GC art. 47]

E. Termination. Occupation does not end upon cessation of hostilities, but continues until full sovereignty of the occupied area is returned to the displaced sovereign, or until sovereignty is assumed by another state.

3) As the Commander of Coalition Forces, the Commander of U.S. Central Command shall directly support the CPA by deterring hostilities; maintaining Iraq's territorial integrity and security; searching for, securing and destroying weapons of mass destruction; and assisting in carrying out Coalition policy generally.

Section 2, The Applicable Law

Unless suspended or replaced by the CPA or superseded by legislation issued by democratic institutions of Iraq, laws in force in Iraq as of April 16, 2003 shall continue to apply in Iraq insofar as the laws do not prevent the CPA from exercising its rights and fulfilling its obligations, or conflict with the present or any other Regulation or Order issued by the CPA.

Section 3, Regulations and Orders issued by the CPA

1) In carrying out the authority and responsibility vested in the CPA, the Administrator will, as necessary, issue Regulations and Orders. Regulations shall be those instruments that define the institutions and authorities of the CPA. Orders are binding instructions issued by the CPA. Regulations and Orders will remain in force until repealed by the Administrator or superseded by legislation issued by democratic institutions of Iraq. Regulations and Orders issued by the Administrator shall take precedence over all other laws and publications to the extent such other laws and publications are inconsistent. The Administrator may also from time to time issue Public Notices.

2) The promulgation of any CPA Regulation or Order requires the approval or signature of the Administrator. The Regulation or Order shall enter into force as specified therein, shall be promulgated in the relevant languages and shall be disseminated as widely as possible. In the case of divergence, the English text shall prevail.

3) CPA Regulations and Orders shall bear the symbols CPA/REG/Date Month 2003/_ and CPA/ORD/Date Month 2003/_. A register of the Regulations and Orders shall indicate the date of entry into force, the subject matter and amendments or changes thereto, or the repeal or suspension thereof.

Section 4, Memoranda

1) The Administrator may issue Memoranda in relation to the interpretation and application of any Regulation or Order.

2) CPA Memoranda shall bear the symbols CPA/MEM/Date Month 2003/_. The provisions of Section 3 shall also apply to the promulgation of CPA Memoranda.

Section 5, Entry into Force

This Regulation shall enter into force on the date of signature.

/s/ 5/16/03

L. Paul Bremer, Administrator
Coalition Provisional Authority

1. “In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations. . .” [GC IV, art. 6(2)]
2. **But**, article 3(b) of Additional Protocol I purports to replace GC IV, article 6(2). Article 3(b) rejects the one-year expiration extending application of the Conventions and Protocol until “termination of the occupation.” [COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, 67-68 (Yves Sandoz, et al., eds. (1987)) [hereinafter PROTOCOL COMMENTARY]]
3. Occupant is bound to apply certain provisions throughout duration of occupation (*i.e.*, humane treatment, fair trial, protection against forced transfers or deportations); **US policy is to continue to apply all aspects of law throughout occupation**

III. AUTHORITY OF OCCUPANT

- A. HR, art. 43. “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, **unless absolutely prevented**, the laws in force in the country.”
 1. Authority of occupying force is supreme, constrained only by:
 - a. The doctrine of military necessity, and
 - b. Limitations imposed by binding international law, including customs and treaties such as the rights of protected persons contained in GC IV
 2. Occupant is obligated to maintain public order and has right to demand obedience of inhabitants

3. All functions of legitimate government cease upon commencement of occupation; functions of government continue only to extent occupant allows [FM 27-10, ¶ 367]
- B. Applicable Law. “The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention.” [GC IV, art. 64]
1. Occupant does not bring its own jurisdiction and civil and criminal laws; ordinarily, laws of occupied country continue in force and courts continue to sit and try criminal cases not of a military nature [GC IV, art. 64]
 2. Local courts should be used when feasible; may be suspended if:
 - a. Judicial personnel will not perform their duties
 - b. Courts are corrupt or unfairly constituted
 - c. Local courts have ceased to function
 - d. Judicial process does not comply with fundamental human rights
 3. Occupant may establish military courts or provost courts
 - a. May be used to try violations of occupation provisions or regulations
 - b. May be used if properly constituted, non-political, and located in occupied territory
 4. Occupant may suspend, repeal, or later existing laws, or promulgate new laws, if required by military necessity, maintenance of order, or welfare of the population [HR, art. 43; GC IV, art. 64(3)]

5. Suspension or repeal of local laws should be related to security of the force, mission accomplishment, or compliance with international law. Examples:

- a. Suspension of the right to bear arms
- b. Suspension of the rights of assembly and protest
- c. Suspension of freedom of movement
- d. Suspension of discriminatory laws

6. Issuing New Laws.

- a. Must publish and provide notice to inhabitants in their own language
- b. Must be published in writing
- c. Must not be retroactive
- d. Occupant has no obligation to comply with constitutional or procedural rules of the occupied country

7. Occupying force is exempt from local law and jurisdiction of local courts [FM 27-10, ¶ 374]

C. Protecting Powers.

1. Geneva Conventions of 1949 envisioned that interests of parties to conflicts would be safeguarded by neutral nations designated as “Protecting Powers”²
2. Protecting Powers have a named role in certain aspects of occupation
3. Protocol I restated and clarified duties of parties to conflicts to designate Protecting Parties or substitutes [GP I, art. 5]
4. In practice, such designations are rare; ICRC often serves as substitute [GC IV, art. 11]

IV. ADMINISTRATION OF OCCUPIED TERRITORY

- A. Military Government. Occupying power exercises control over occupied territory through administration of military government, based on inability or failure of legitimate government [FM 27-10, ¶ 362]
 1. Irrelevant whether government is military, civil, or mixed in administration
 2. Government is imposed by force, its legality determined by the law of war [FM 27-10, ¶ 368]
- B. Primary Duty. Military Government’s paramount duty is to restore and maintain public order [HR, art. 43; FM 27-10, ¶ 363]

² “The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible, the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention.

They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.”
[GC IV, art. 9]

C. Protected Persons in Occupied Territory.

1. Defined. Protected persons are civilian enemy nationals within the national territory of each of the parties to the conflict, and all civilians in occupied territories except nationals of the occupying power and its allies [Commentary, GC IV]
2. Inviolability of Rights. “Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.” [GC IV, art. 47]

D. Particular Issues.

1. Freedom of Movement. Occupant may restrict freedom of individual movement, prohibit change of residence, and require individuals to carry ID documents [FM 27-10 ¶ 375]
2. Freedom of Religion. Occupant is obligated to permit freedom of religion in occupied territory, but clergy may not refer to politics or incite resistance [GC IV art. 64]
3. Commercial Restrictions. Occupant may restrict commercial intercourse in the occupied territory, including placing restrictions or prohibitions on commerce, consistent with the occupant’s military purpose [FM 27-10 p 376]
4. Censorship. “The belligerent occupant may establish censorship of the press, radio, theater, motion pictures, and television, or correspondence, and all other means of communication. It may prohibit entirely the publication of newspapers or prescribe regulations for their publication and circulation.” [FM 27-10, ¶ 377]

5. Taxation and Currency. Occupant controls financial administration, but pre-existing tax structure remains in place [HR, art. 48]; generally, both the occupant's own currency and that of the occupied territory may be used [FM 27-10 ¶ 430]
6. Transportation. Occupant exercises authority over all means of transportation within the occupied territory, both public and private; may be seized and regulated [FM 27-10 ¶ 378]

E. Detention Operations.

1. Treatment. *Regardless of status of detainee, minimum standard under international law and U.S. regulations is humane treatment*
2. Categories of Persons Who May Be Detained.
 - a. Security internees
 - b. Criminal detainees
 - c. Enemy Prisoners of War (EPWs)
3. Security Internees.
 - a. Identify within 48 hours
 - b. May hold for 72 hours; can be extended up to 14 days
 - c. Review after 72 hours by detention review authority
 - d. Provide notice of rights and appeal of detention decision
 - e. Conduct review at 6 months

- f. Options are release, internment, or criminal prosecution
- 4. Criminal Detainees.
 - a. May hold for 72 hours
 - b. Review after 72 hours by detention review authority
 - c. Options are release or send to national court
- 5. EPWs.
 - a. May hold for 72 hours
 - b. Review after 72 hours by detention review authority
 - c. If status in doubt, conduct Article 5 tribunal
 - d. Must parole or release at conclusion of hostilities

V. RIGHTS OF THE OCCUPIED POPULATION

A. Human Rights.

- 1. “Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.” [HR, art. 46 ¶ 1]

2. Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.” [GC IV, art. 27]
- B. Repatriation. Protected persons not nationals of the Occupying Power may leave the territory. [GC art. 35, 48]
- C. Deportations, Evacuations, and Transfers.
1. Deportations of protected persons out of the occupied territory and forcible individual or mass transfers are prohibited
 2. If security or military necessity requires it, the occupant may partially or completely evacuate a given area, but not outside of occupied territory unless it cannot be avoided
 3. Occupant may not relocate its own population into occupied territory [GC IV, art. 49]
- D. Children.
1. Occupant shall facilitate proper working of institutions devoted to care and education of children
 2. Occupant shall take all necessary steps to facilitate identification of children and registration of parentage
 3. Occupant shall arrange for the maintenance and education (if possible, by persons of the same nationality, religion, and language) of children orphaned or separated from their parents

4. Occupant shall take all necessary steps to identify children whose identity is in doubt
 5. Occupant shall not hinder application of preferential treatment for children younger than age fifteen, expectant mothers, and mothers of children under age seven in terms of food, medical care, and protection against effects of war [GC IV, art. 50]
- E. Food and Medical Supplies. Occupant has duty to ensure population has food and medical supplies, particularly if resources of occupied territory are inadequate [GC IV, art. 55 ¶¶ 1 and 3; GP I, art. 14]
- F. Hygiene and Public Health. Occupant has duty to ensure and maintain medical and hospital establishments and services and public health and hygiene in the occupied territory [GC IV, art. 56]
- G. Requisition of Hospitals. In cases of urgent necessity for care of military wounded and sick, occupant may requisition civilian hospitals provided that occupant arranges for care of civilian patients; if materials and stores of civilian hospitals are needed for civilian population, cannot be requisitioned [GC IV, art. 57]
- H. Spiritual Assistance. Occupant shall allow clergy to provide religious and spiritual assistance to their religious communities; occupant shall accept religious articles and books and arrange for their distribution [GC IV, art. 58]
- I. Relief.
1. Collective Relief. If all or part of the population of an occupied territory needs supplies, then the occupant shall agree to and facilitate relief schemes through other states or the International Committee of the Red Cross (ICRC); provisions shall consist of food, clothing, and medical supplies; passage of such consignments must be permitted and protected [GC IV, art. 59]

2. Responsibilities of Occupying Power. Relief consignments do not relieve the occupant of its obligations regarding food and medical supplies, hygiene, and public health, nor may the occupant divert such relief consignments from their intended purpose [GC IV, art. 60]
3. Distribution. All contracting parties shall make every effort to ensure transit and transport of relief consignments to occupied territories; such consignments shall be exempt from charges, taxes, or customs duties [GC IV, art. 61; GP I, art 81]
4. Individual Relief. Protected persons in occupied territories shall be allowed to receive individual consignments sent to them [GC IV, art. 62]
5. Relief Societies. Recognized national Red Cross, Red Crescent, and Red Lion and Sun societies shall be permitted to pursue their activities, as shall other humanitarian organizations; occupant may not require changes to personnel or structure of such societies [GC IV, art. 63]

VI. PROPERTY

- A. Destruction Prohibited. Destroying or seizing enemy property is prohibited, unless such destruction or seizure is demanded by imperative necessities of war [HR, art. 23 ¶(g)]; occupant is prohibited from destroying real or personal property (state or private) unless absolutely necessary due to military operations [GC IV, art. 53]
- B. Pillage. Pillage, or looting by occupation troops, is strictly forbidden [HR, art. 47; GC IV, art. 33]
- C. Property Control. Occupant may control property within occupied territory to extent necessary to prevent use by hostile forces [FM 27-10, ¶ 399]
- D. Definitions.

1. Seizure. Seizing, or temporarily taking, private property that has a direct military use (*i.e.*, broadcasting or communications equipment) is permissible, but owner must be provided a receipt to reclaim the property later, as well as compensation for any damage to the property [FM 27-10, ¶ 409; Schmitt article, p.4]
2. Confiscation. Confiscating, or permanently taking, private property is not permissible [Schmitt article, p.5]
3. Requisition. Requisitioning of services and property from the population is permissible if ordered by the local commander and paid for in cash; food or other items needed by the civilian population may only be requisitioned after taking those needs into consideration [FM 27-10, ¶¶ 412-415; Schmitt article, p.5]

E. Ownership.

1. Beneficial Ownership. It may be necessary to look beyond legal title to determine whether property is public or private; evaluate character of property based on who benefits from ownership, *i.e.*, private trust funds not public property just because they are held in a state bank [FM 27-10, ¶ 394a]
2. Mixed or Unknown Ownership. Property is public if state has assumed economic risk involved in holding and managing the property; if owner unknown, treat as public until ownership ascertained [FM 27-10, ¶ 394b, c]

F. State Property.

1. Occupant serves as administrator and conservator of public buildings, real estate, forests, and agricultural estates belonging to the hostile state; occupant must safeguard and administer [HR, art. 55]

2. Real property of direct military use (forts, arsenals, dockyards, magazines, barracks, railways, bridges, piers, wharves, airfields, and other military facilities) remain in occupant's control until close of the war and may be damaged or destroyed if militarily necessary [FM 27-10, ¶ 401]
3. Non-military real property may not be damaged or destroyed unless military operations render absolutely necessary; occupant may not sell real property or lessen its value [FM 27-10, ¶ 402]
4. Movable Property.
 - a. "An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for operations of the war." [HR, art. 53]
 - b. Classes of Movable Property. All movable property susceptible to military use may be taken and used by the occupant; all other property must be respected and may not be appropriated [FM 27-10, ¶ 404]

G. Private Property.

1. Municipal, Religious, Charitable, and Cultural Property. Even where such property belongs to the State, it shall be treated as private property; seizure and destruction is forbidden [HR, art. 56]
 - a. Such premises may be requisitioned in the event of necessity for quartering troops and the sick and wounded, storage of supplies and material, housing of vehicles and equipment, and otherwise as allowed for private property; must secure against all avoidable injury [FM 27-10, ¶ 405b]

- b. It is US practice that—if emergency conditions require such use—religious buildings, shrines, and consecrated places employed for worship are to be employed only as aid stations, medical installations, or for housing the wounded awaiting evacuation [FM 27-10, ¶ 405c]
- 2. No Confiscation of Private Property. Prohibition extends to outright takings as well as to any acts that, by use of threats, intimidation, or pressure, or by actual exploitation of the occupant's power, permanently or temporarily deprives the owner of the property without consent or without authority under international law. [HR, art. 46 ¶ 2; FM 27-10, ¶ 406b] Private real property may not be seized, but may be requisitioned. [FM 27-10, ¶ 407]
- 3. Private Property Susceptible to Direct Military Use.
 - a. Property such as cables, telephone and telegraph plants, radio, television, and telecommunications equipment, motor vehicles, railways, railway plants, port facilities, ships in port, barges and other watercraft, airfields, aircraft, depots of war, all varieties of military equipment, including that in the hands of manufacturers, component parts of or material suitable only for use in the foregoing, and in general all kinds of war material, may be seized provided a receipt is given to the owner for return of the property and/or compensation [GC IV, art. 53; FM 27-10, ¶ 410a]
 - b. Destruction of any of the foregoing is permissible only if rendered absolutely necessary by military operations [GC IV, art. 53; FM 27-10, ¶ 410b]

H. Requisitions.

- 1. Requisitions in kind and services shall be made only for the needs of the occupying army; shall be in proportion to the resources of the country; shall be demanded only by the commander of the occupied locality; and shall be paid for in cash so far as possible [HR, art. 52]

2. Almost everything may be requisitioned for the maintenance of the army: fuel, food, clothing, building materials, machinery, tools, vehicles, furnishings for quarters; billeting of troops in occupied areas is authorized [FM 27-10, ¶ 412b]
3. Requisitioning of food and medical supplies in the occupied territory is only permissible for use by the occupation forces and administration personnel and only if the needs of the civilian population have been taken into account; the occupant shall pay fair value for any requisitioned goods [GC IV, art. 55 ¶ 2]
4. Coercive measures must be limited to the amount and kind necessary to secure the requisitioned articles [FM 27-10, ¶ 417]

VII. SERVICES OF OCCUPIED POPULATION

A. Labor.

1. “The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces.” [GC IV, art. 51]
2. Permissible Work. Protected persons over age 18 may only be compelled to do work necessary for the needs of the occupation army, for public utility services, or for feeding, sheltering, clothing, transportation or health of occupied population; no military operations [GC IV, art. 51]
3. Prohibited Labor. Prohibition against working in support of military operations includes services directly promoting the ends of the war such as construction of fortifications, entrenchments, and military airfields or the transportation of supplies or ammunition in the zone of operations; however, voluntary employment for pay to do such work is permitted [FM 27-10, ¶ 420]

B. Services That May be Requisitioned.

1. Professional, such as engineers, physicians and nurses, artisans and laborers such as clerks, carpenters, butchers, bakers, and truck drivers
 2. Officials and employees of railways, truck lines, airlines, canals, river or coastwise steamship companies, telephone, telegraph, radio, postal and similar services, gas, electric, and water works, and sanitary authorities
 3. Repair of roads, bridges, and railways and services on behalf of local population including care for wounded and sick and burial of the dead
- C. Protection of Workers. “All measures aimed at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the Occupying Power, are prohibited.” [GC IV, art. 54]
- D. Judges and Public Officials.
1. Occupant may not alter status of judges or public officials or coerce or discriminate against them for not fulfilling their functions based on reasons of conscience; however, occupant may remove officials from their posts [GC IV, art. 54]
 2. Oath. Occupant may require officials to take an oath to perform their duties conscientiously, and failure to do so may result in removal [FM 27-10, ¶ 423]; distinguish this oath of obedience from an oath of allegiance to the Occupying Power, which is forbidden [HR, art. 45]
 3. Salaries. Civil officials such as judges, administrative or police officers, and officers of city governments are paid from public revenues of occupied territory until military government has reason to dispense with their services [FM 27-10, ¶ 424]

VIII. PUBLIC FINANCE

- A. Taxes.

1. If occupant collects taxes, dues, and tolls for the benefit of the occupied state, it shall be done in accordance with existing rules of incidence and assessment [HR, art. 48]
2. Taxes shall be applied first to the costs of administering the occupied territory, and the balance may be used for the needs of the occupant [FM 27-10, ¶ 425b]
3. No new taxes may be levied by occupant unless considerations of public order and safety so require [FM 27-10, ¶ 426b]

B. Contributions.

1. If the occupant levies money contributions in addition to taxes, these may only be for the needs of the army or for administration of the occupied territory [HR, art. 49]
2. Contributions may only be collected pursuant to a written order, and receipts shall be given for all contributions [HR, art. 51]

C. Costs of Occupation.

1. Economy of occupied country can be required to bear expenses of occupation, which should not be greater than the economy can reasonably be expected to bear [FM 27-10, ¶ 364]
2. In practice: funded by Department of Defense appropriations

IX. SECURITY OF THE OCCUPANT

A. Enforcement and Obedience.

1. Occupant can demand obedience from inhabitants of occupied territory for the security of its forces, maintenance of law and order, and proper administration

2. Inhabitants have duty to behave in a peaceful manner, take no part in hostilities, to refrain from acts harmful to the occupying force and its troops, and to render strict obedience to orders of occupant [FM 27-10, ¶ 432]

B. Security Measures. Military authorities in occupied territories have the right to perform police functions and to protect their own security.

1. The following measures of population control are permissible [GC IV, art. 27(4), 42, 43, 49(2), 64, 66, and 78]:
 - a. Restricting freedom of movement
 - b. Evacuation
 - c. Under certain exceptional circumstances, persons may be held incommunicado for a limited period
 - d. Judicial process
 - e. Assigned residence
 - f. Internment
2. The following measures of population control are forbidden at all times [GC IV, art. 31, 32, 33(1) and (3), 49(1)]:
 - a. Violence
 - b. Physical or moral coercion, particularly to obtain information
 - c. Brutality
 - d. Punishment for acts of others (reprisals or collective penalties)

e. Deportations

C. Publication of Penal Provisions.

1. “The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. The effect of these penal provisions shall not be retroactive.” [GC IV, art. 65]
2. Publication must be in written form [FM 27-10, ¶ 435b]

D. Competent Courts. When penal provisions are breached, occupant may try accused before its own properly constituted non-political military courts, provided such courts sit in the occupied territory; courts of appeal should likewise sit in the occupied territory [GC IV, art. 66]

E. Applicable Law and Penalties.

1. Courts shall apply those laws in effect prior to the offense
2. Penalties shall be proportionate to the offenses committed and shall take into account that the inhabitants are not nationals of the Occupying Power [GC IV, art. 67]
3. Offenses against Occupying Power which (a) do not constitute attempts on life or limb of members of occupying forces, (b) do not pose a grave collective danger, or (c) do not seriously damage property of the occupying forces shall carry a punishment of internment or simple imprisonment proportionate to the offense committed [GC IV, art. 68]
4. Death Penalty.
 - a. Occupying Power may only impose death penalty on protected persons convicted of espionage, serious acts of sabotage against military installations, or intentional offenses which have caused the death of one or more persons [GC IV, art. 68]

- b. Death penalty may not be imposed on protected persons less than 18 years of age at the time of the offense
- c. Death penalty may only be imposed for those offenses that were punishable by death under the law of the territory prior to occupation [GC IV, art. 68]
- e. US Reservation: US has reserved the right to impose the death penalty without regard to whether the offense was punishable by death under the law of the occupied territory prior to occupation [FM 27-10, ¶ 438b]
- f. No person condemned to death shall be deprived of the right to petition for pardon or reprieve; death sentence suspended for 6 months absent grave emergency involving organized threat to Occupying Power or its forces [GC IV, art. 75]

5. Other Offenses and Penalties.

- a. Fines and other penalties not involving deprivation of liberty may also be imposed [FM 27-10, ¶ 438c]
- b. Period of time a person spends under arrest awaiting trial or punishment shall be deducted from any sentence of imprisonment [GC IV, art. 69]

F. Pre-Occupation Offenses.

- 1. Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for offenses committed before the occupation, except for violations of the law of war [GC IV, art. 70]
- 2. Nationals of the Occupying Power who sought refuge in the occupied territory shall not be arrested, prosecuted, convicted or deported from the occupied territory, except as follows:
 - a. For offenses committed after the outbreak of hostilities

- b. For offenses committed before the outbreak of hostilities which would have justified extradition in time of peace

G. Penal Procedure.

1. Occupying Power may pronounce sentence only after a regular trial [GC IV, art. 71]
2. Occupying Power must promptly provide those accused of crimes with a written copy of the charges in a language they understand; trial must be held as rapidly as possible [GC IV, art. 71]
3. Accused persons have the following rights at trial [GC IV, art. 72]:
 - a. To present evidence and call witnesses
 - b. To be represented by a qualified counsel or advocate of their choice and time to prepare their defense
 - c. To have the assistance of an interpreter
 - d. To appeal (not absolute)
4. Protecting Power [GC IV, art. 74]
 - a. Occupying Power must advise Protecting Power of proceedings involving the death penalty, or imprisonment for 2 years or more, and must notify the Protecting Power of any final judgment confirming a death sentence
 - b. Representatives of the Protecting Power may attend trial of any accused person except for those cases involving security of the occupant; Occupying Power must send date and place of trial to Protecting Power

- c. Protecting Power may appoint the accused counsel or an advocate